IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1498 OF 1990

Mrs.Lorna Barret,
a citizen of India,
residing at C/8, Benmar Hill Road,
Bandra, Bombay-400 050. ...Petitioner.

Vs.

1. The Principal,
   St.Andrew's College of Arts
   and Commerce, St.Dommnic Road,
   Bandra Bombay-400 050.
2. University of Bombay,
   having their offices at inter alia
   University of Bombay Buildings,
   Fountain, Bombay-400 021.
3. MSGR. Nereus Rodrigues,
   Managing Trutee of St. Andrew's
   Society for Education and Research,
   a Charitable Trust, registered under
   the provisions of Bombay Public
   Trusts Act, 1950 and having its
   office at St.Andrew's College,
   St.Dominic Road, Bandra,
   Bombay-400 050.
4. St.Andrew's Society
   for Education and Research,
   a Charitable Trust, registered under
   the provisions of Bombay Public
   Trusts Act, 1950 and having its
   office at St.Andrew's College,
   St.Dominic Road, Bandra,
   Bombay-400 050.
5. State of Maharashtra. ...Respondents.

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Ms.Sumyogita S. Chiparikar i/b. Chitnis Vaity for the Petitioner.

Mr. Y. J.John for Respondent No.1.
Mr.R. A. Rodrigues for respondent No.2.
Mr.J. Reis with Mr.Rajesh Kachare for Respondent Nos.3 and 4.
Mr. K.R. Belosey, AGP for Respondent No.5.

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CORAM : DR.D.Y.CHANDRACHUD, J.

January 13, 2005.

P.C.:

The Petitioner was initially appointed as a full time lecturer in English in Chetana Junior College on a temporary basis against a post reserved for Backward Classes on 25th June 1983 for the Academic Year 1983-84. On 20th June 1984, the Petitioner was appointed on probation by the aforesaid Junior College for a period of two years subject to the approval of the Deputy Director of Education. The Petitioner was thereafter, appointed as a full-time lecturer in the St.Andrew's College in Advertising and English. During the Academic Years 1985-86 and 1986-87, her appointment was approved by the University, by communications dated 24th March 1987 and 16th June 1987. During the Academic Year 1987-88, the Petitioner came to be appointed as a part-time lecturer due to a reduction in workload. For the Academic Years

1988-89, 1989-90 and 1990-91, the Petitioner was appointed as a part-time lecturer and her appointment was approved by a communication dated 7th July 1993. In 1991, the Petitioner was appointed as a full time lecturer on probation and that appointment was approved with effect from 15th July 1991 by the University by a communication dated 21st August 1991. The Petitioner was confirmed as a full-time lecturer in English on 15th July 1993. She worked in the College until her retirement in November 2003.

The petition was filed since the grievance of the Petitioner was that despite a communication of the University dated 9th December 1988, directing the College to treat the appointment of the Petitioner as a second full-time lecturer in English retrospectively from 20th June 1987 to 20th April 1988, the College had not implemented the direction. The direction issued by the University was based on a decision of the Standing committee on changes in College Staff. The Committee had observed that there was sufficient workload for the appointment of the Petitioner as a full-time lecturer even in the Academic Year

1987-88 and that, therefore, there was no justification to treat her on a part-time basis. The Petition was amended after it came to be admitted and the prayers in the petition as amended are (i) an appropriate writ, order or direction quashing and setting aside the action of the College not to treat the Petitioner as a full-time lecturer; (ii) a writ of Mandamus (a) directing the College to issue to the Petitioner a correct appointment letter as full-time lecturer for 1989-90; (b) directing the College to appoint the Petitioner as a full-time lecturer commencing from 20th June 1987 in accordance with the directives of the University; (iii) a direction for quashing and setting aside the approval which was granted to the appointment of the Petitioner as a part-time lecturer for 1989-1991; and (iv) a declaration that the Petitioner was entitled to appointment as a permanent full-time lecturer since 1987; that the Petitioner attained the Senior Lecturers' scale in 1992 and the selection scale in 1998. The Petitioner also sought consequential benefits including arrears of salary.

When this matter was initially heard on 15th October 2004

and 29th October 2004, a suggestion was made to the Learned Counsel appearing on behalf of the University, the College and the Learned AGP to explore the possibility of resolving the dispute. The main issue which now survives relates to the pensionary benefits of the Petitioner since she has retired from service. A meeting was thereafter held on 7th December 2004 between the Pro-Vice-Chancellor of the University, the Joint Director of Higher Education and the Learned Advocate for the University. Counsel appearing on behalf of the University has tendered before the Court, Minutes of the Meeting prepared by the Pro-Vice-Chancellor of the University. In so far as those Minutes are concerned, it would be material to extract what transpired at the meeting for the purposes of the present proceedings:

> "From the record, it is very clear that Mrs.Lorna Barrett was appointed as part-time lecturer in 1987 at St.Andrew's College and the total workload in the department of English in the said college was 29 and there was full-time teacher as the Head of the Department of English and therefore the workload for petitioner was only as part-time lecturer. Therefore, she was appointed as a part-time lecturer. Thereafter the Petitioner had also started working as full-time teacher in Chetana College as a junior college teacher, which comes under the school education. Her services in the said college for the year 1988-89 for 9 months in addition

to her part-time job in St.Andrew' s College. The petitioner was made full-time teacher in St. Andrew's College from 15th July 1991, when the college was on fully grant-in-aid from the State Government and there was also full workload to her. Therefore, her regular services from 15th July 1991 was on fully grant-in-aid and it deserves all benefits of full-time in the services. Therefore, with reference to the Vth pay commission and as per the UGC guidelines, she was eligible to get Senior Scale from 1999 subject to good performance appraisal in service. Her nine months services as a full-time services can be considered for pension benefit provided it is approved by the school education with accepting financial liability by that Management. The same is required to be entered in her Service Book.

Smt.Lorna Barrett was also appointed full-time lecturer for the period of 20th June 1985 to 20th April 1986 in a temporary Post against the reserved candidate. Subsequently, she was also appointed in the same capacity from 20th June 1986 to 1987. Therefore, she has two years temporary service to her credit. Since she is appointed full-time lecturer from 15th July 1991 on probation and subsequently confirmed, therefore, for these two years service she can be given advantage in placement for Senior Scale in 1997 and Selection Grade in 2002."

Today when the matter was called out, the differences between the parties appear to have considerably narrowed down. The Petitioner was admittedly a full-time employee of Chetana Junior College during the Academic Years 1983-84 and 1984-85. During the Academic Years 1985-86 and 1986-87 she was again in

full-time employment of St.Andrew's College of Arts. During the Academic Year 1987-88, she was reverted as a part-time lecturer. The University had enquired into the matter and by its communication dated 9th December 1988 informed the College that there was a sufficient workload for continuing the Petitioner as a full-time employee during the Academic Year 1987-88. That direction of the University was not challenged by the College. Mr.Reis, Learned Counsel appearing on behalf of the College has very fairly stated that without prejudice to the contentions of the College and so as to resolve the dispute amicably, the College is willing to pay to the Petitioner the difference between the salary which was paid to her as a part-time lecturer and the salary to which she would have been entitled for full time work during the Academic Year 1987-88. This has been agreed to be paid by the College without any financial liability on the part of the State.

The Petitioner, as already noted earlier, was appointed as a full-time lecturer in 1991. There is no reason why the Petitioner should be deprived of the service that has been

rendered by her during the Academic Years 1983-84, 1984-85 (in Chetana Junior College as full-time lecturer), and in 1985-86, 1986-87 and 1987-88 with the St.Andrew's College of Arts as full-time lecturer notionally for the purposes of calculating her pensionary benefits. If that is allowed, the Petitioner would be entitled to the grant of Senior Scale in June 1995 and Selection grade in 2000. In the Minutes which are adverted to in the earlier part of this order, of the meeting held between the Pro-Vice-Chancellor and Joint Director of Education, the dates for placement in the Senior Scale and for the conferment of Selection grade are stated as 1997 and 2000 respectively, which will stand advanced to June 1995 and 2000 respectively. There is a consensus between Counsel on this. The pensionary benefits and terminal dues of the Petitioner including gratuity would have to be re-worked on this basis. Since the aforesaid exercise will have to be carried out, the Learned AGP states that necessary steps would be taken to re-work the pensionary benefits and to take consequential steps in accordance with law within a period of 8 weeks from today. It is needless to add that the directions which have been issued in

the aforesaid terms are based upon the facts of this case and the Court would not be regarded as having laid down a wider proposition of law which otherwise does not arise for decision here. The Petitioner has admittedly rendered long years of service and at this stage when her pensionary benefits are to be computed, she is lawfully entitled to the computation of those benefits on the basis of the service rendered by her.

Before concluding, the Court wishes to record its appreciation of the fair attitude shown by Learned Counsel for the University, Mr.Rui Rodrigues, Learned Counsel for the College, Mr.Reis and the Learned AGP, Mr. K.R. Belosey. Counsel have been able to arrive at a broad consensus which forms the basis of the order. Mr.Reis for the College states that the College shall forward a proposal to the Joint Director of Higher Education in terms of the aforesaid understanding within a period of one week from today.

Counsel appearing on behalf of the Petitioner states that

the Petitioner would submit a representation to the Joint Director of Higher Education for the difference in salary, if any, that would be payable to the Petitioner in accordance with the recommendations of the Fourth Pay Commission and Fifth Pay Commission consequent upon the grant to the Petitioner of the Senior Scale and selection grade. This representation shall be considered on merits in accordance with law and appropriate orders shall be passed thereon.

The Writ Petition is accordingly disposed of in thee terms since no other point is pressed.

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